

Introduced by Senator Monning
(Coauthor: Assembly Member Achadjian)

February 26, 2015

An act to amend Sections 7152, 7153, 7153.2, 7153.3, 7154, 7155.5, and 7156 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 561, as introduced, Monning. Home improvement salespersons.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors, including home improvement contractors, by the Contractors' State License Board within the Department of Consumer Affairs. Existing law also provides for the registration and regulation of home improvement salespersons by the board. Existing law requires the board to appoint a registrar of contractors who is the executive officer and secretary of the board and is responsible for carrying out specified administrative duties. Existing law requires the fees and civil penalties received under this law to be deposited in the Contractors' License Fund, a continuously appropriated fund.

Under existing law, a home improvement salesperson is a person employed by a licensed home improvement contractor to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation, or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

This bill would provide that such a salesperson also be registered under the law.

Existing law makes it a crime for any person to engage in the occupation of home improvement salesperson for one or more home

improvement contractors without a registration for each of the home improvement contractors by whom he or she is employed. Existing law makes it a crime for any person to engage in the occupation of salesperson of home improvement goods or services, as defined, without a registration.

This bill would instead make it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without having, at the time of the sales transaction, a current and valid registration. The bill would instead make it a crime for any person to engage in the occupation of salesperson of home improvement goods or services without having, at the time of the sales transaction, a current and valid registration. By changing the definitions of these crimes, the bill would impose a state-mandated local program.

Under existing law, home improvement salesperson registrations expire subject to board determination, as described. Existing law makes an application for renewal of registration delinquent if the application is not postmarked by the date on which the registration would otherwise expire. However, existing law authorizes a registration to be renewed at any time within 3 years after its expiration upon the filing of an application for renewal on a specified form, the payment of the renewal fee, and a delinquent renewal penalty in the amount of \$25.

This bill would provide that these registrations expire 2 years from the last day of the month in which the registration was issued or 2 years from the date on which the renewed registration last expired. The bill would make that delinquent renewal penalty equal to 50% of the renewal fee. Because this additional delinquent amount would be deposited into the Contractors' License Fund, a continuously appropriated fund, the bill would make an appropriation.

Under existing law, a home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson is subject to disciplinary action.

This bill would require a home improvement contractor to notify the registrar in writing about the pending employment of a registered home improvement salesperson. The bill would also require a home improvement contractor to notify the registrar when a registered home improvement salesperson ceases to be employed by the contractor. The bill would make a home improvement contractor who fails to report this information subject to disciplinary action by the registrar.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7152 of the Business and Professions
2 Code is amended to read:
3 7152. (a) “Home improvement salesperson” is a person, *who*
4 *is registered under this chapter*, employed by a home improvement
5 contractor licensed under this chapter to solicit, sell, negotiate, or
6 execute contracts for home improvements, for the sale, installation
7 or furnishing of home improvement goods or services, or of
8 swimming pools, spas, or hot tubs.
9 (b) The following shall not be required to be registered as home
10 improvement salespersons:
11 (1) An officer of record of a corporation licensed pursuant to
12 this chapter, or a manager, *member, or officer* of record of a limited
13 liability company licensed pursuant to this chapter.
14 (2) A general partner listed on the license record of a partnership
15 licensed pursuant to this chapter.
16 (3) A qualifying person, as defined in Section 7025.
17 (4) A salesperson whose sales are all made pursuant to
18 negotiations between the parties if the negotiations are initiated
19 by the prospective buyer at or with a general merchandise retail
20 establishment that operates from a fixed location where goods or
21 services are offered for sale.
22 (5) A person who contacts the prospective buyer for the
23 exclusive purpose of scheduling appointments for a registered
24 home improvement salesperson.
25 (6) A bona fide service repairperson who is in the employ of a
26 licensed contractor and whose repair or service call is limited to
27 the service, repair, or emergency repair initially requested by the
28 buyer of the service.
29 (c) The exemption to registration provided under paragraphs
30 (1), (2), and (3) of subdivision (b) shall apply only to those

1 individuals who, at the time of the sales transaction, are listed as
2 personnel of record for the licensee responsible for soliciting,
3 negotiating, or contracting for a service or improvement that is
4 subject to regulation under this article.

5 SEC. 2. Section 7153 of the Business and Professions Code is
6 amended to read:

7 7153. (a) It is a misdemeanor for any person to engage in the
8 occupation of salesperson for one or more home improvement
9 contractors within this state without having ~~a, at the time of the~~
10 ~~sales transaction, a current and valid home improvement~~
11 ~~salesperson registration issued by the registrar for each of the home~~
12 ~~improvement contractors by whom he or she is employed as a~~
13 ~~home improvement salesperson registrar~~. If, upon investigation,
14 the registrar has probable cause to believe that a salesperson is in
15 violation of this section, the registrar may issue a citation pursuant
16 to Section 7028.7.

17 It is a misdemeanor for any person to engage in the occupation
18 of salesperson of home improvement goods or services within this
19 state without having ~~a, at the time of the sales transaction, a current~~
20 ~~and valid home improvement salesperson registration issued by~~
21 the registrar.

22 (b) Any security interest taken by a contractor, to secure any
23 payment for the performance of any act or conduct described in
24 Section 7151 that occurs on or after January 1, 1995, is
25 unenforceable if the person soliciting the act or contract was not
26 a duly registered salesperson or was not exempt from registration
27 pursuant to Section 7152 at the time the homeowner signs the
28 home improvement contract solicited by the salesperson.

29 SEC. 3. Section 7153.2 of the Business and Professions Code
30 is amended to read:

31 7153.2. All *home improvement salesperson* registrations issued
32 under the provisions of this article shall expire ~~on a date established~~
33 ~~pursuant to Section 152.6. two years from the last day of the month~~
34 ~~in which the registration was issued, or two years from the date~~
35 ~~on which the renewed registration last expired.~~

36 SEC. 4. Section 7153.3 of the Business and Professions Code
37 is amended to read:

38 7153.3. (a) To renew a *home improvement salesperson*
39 registration, *which has not expired*, the registrant shall before the
40 time at which the registration would otherwise expire, apply for

1 renewal on a form prescribed by the registrar and pay a renewal
2 fee prescribed by this chapter. *Renewal of an unexpired registration*
3 *shall continue the registration in effect for the two-year period*
4 *following the expiration date of the registration, when it shall*
5 *expire if it is not again renewed.*

6 (b) An application for renewal of registration is delinquent if
7 the application is not postmarked by the date on which the
8 registration would otherwise expire. A registration may, however,
9 still be renewed at any time within three years after its expiration
10 upon the filing of an application for renewal on a form prescribed
11 by the registrar and the payment of the renewal fee prescribed by
12 this chapter and a delinquent renewal penalty in ~~the~~ *an amount of*
13 ~~twenty-five dollars (\$25).~~ *equal to 50 percent of the renewal fee,*
14 *if the registration is renewed after its expiration.* If a registration
15 is not renewed within three years, the person shall make *a new*
16 application for registration pursuant to Section 7153.1.

17 (c) The registrar may refuse to renew a registration for failure
18 by the registrant to complete the application for renewal of
19 registration. If a registrant fails to return the application rejected
20 for insufficiency or incompleteness within 90 days from the
21 original date of rejection, the application and fee shall be deemed
22 abandoned. Any application abandoned may not be reinstated.
23 However, the person may file a new application for registration
24 pursuant to Section 7153.1.

25 The registrar may review and accept the petition of a person who
26 disputes the abandonment of his or her renewal application upon
27 a showing of good cause. This petition shall be received within 90
28 days of the date the application for renewal is deemed abandoned.

29 SEC. 5. Section 7154 of the Business and Professions Code is
30 amended to read:

31 7154. (a) *A home improvement contractor licensed under this*
32 *chapter shall notify the registrar in writing, on a form prescribed*
33 *by the registrar, about the pending employment of a registered*
34 *home improvement salesperson, pursuant to the terms of this*
35 *article. This notification requirement shall include, but not be*
36 *limited to, the name and registration number of the home*
37 *improvement salesperson who is pending employment by the*
38 *contractor. The form shall be submitted prior to the home*
39 *improvement salesperson beginning work for the contractor.*

1 (b) A home improvement contractor shall notify the registrar
2 in writing, on a form prescribed by the registrar, when a registered
3 home improvement salesperson ceases to be employed by the
4 contractor. This notification requirement shall include, but not be
5 limited to, the name and registration number of the home
6 improvement salesperson who had been employed by the
7 contractor. The form shall be submitted within 90 days after the
8 home improvement salesperson ceases to be employed by the
9 contractor.

10 (c) A home improvement contractor who employs a registered
11 home improvement salesperson to sell home improvement
12 contracts, but who fails to report to the registrar pursuant to
13 subdivision (a) or (b), is subject to disciplinary action by the
14 registrar.

15 (d) A home improvement contractor who employs a person to
16 sell home improvement contracts while ~~such~~ that person is not
17 registered by the registrar as a home improvement ~~salesman~~
18 salesperson as provided in this article, is subject to disciplinary
19 action by the registrar.

20 SEC. 6. Section 7155.5 of the Business and Professions Code
21 is amended to read:

22 7155.5. Violations of any provisions of this chapter by a home
23 improvement salesperson; ~~likewise constitutes a~~ constitute cause
24 for disciplinary action against the contractor *by whom he or she*
25 *was employed at the time the violation occurred*, whether or not
26 ~~he or she~~ the contractor had knowledge of or participated in the
27 act or omission constituting violations of this chapter.

28 SEC. 7. Section 7156 of the Business and Professions Code is
29 amended to read:

30 7156. It shall be a misdemeanor and a cause for disciplinary
31 action to commit any of the following acts:

32 (a) For any *home improvement* salesperson to fail to account
33 for or to remit to his or her employing contractor any payment
34 received in connection with any home improvement transaction
35 or any other transaction involving a work of improvement.

36 (b) For any person to use a contract form in connection with
37 any home improvement transaction or any other transaction
38 involving a work of improvement if the form fails to disclose the
39 name of the contractor principal by whom he or she is employed.

1 SEC. 8. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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